

80076-6

SUPREME COURT OF THE
STATE OF WASHINGTON

No. ~~80251-3~~

JOSEPH A. SIMONETTA and JANET E. SIMONETTA,

Respondents,

v.

VIAD CORP.,

Petitioner.

AMICUS CURIAE BRIEF ON BEHALF OF
FLOWSERVE CORPORATION

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I. IDENTITY AND INTEREST OF AMICI CURIAE

Amici, Flowserve Corporation, formerly known as the Duriron Company, Inc., (hereinafter “Durco”) respectfully submits this brief to assist the Court in determining the duty of care owed by a product manufacturer.

Since 1912, Durco has sold pumps and valves to commercial industries but never directly to the U.S. Navy. Durco’s pumps and valves are designed to be adapted to a variety of uses. The nature of Durco’s product raises important policy considerations for the State of Washington. In particular, does a manufacturer such as Durco owe a duty to warn as to a product (1) it does not manufacture or sell; (2) supply or recommend; (3) it does not know will be used in combination with its own product; (4) when there is no evidence its products were sold with knowledge that an end user specified insulation? Durco has never specified or recommended the use of asbestos-containing thermal insulation with its products.

Durco is regularly a defendant in Washington asbestos litigation and around the country in actions alleging exposure to asbestos insulation affixed to equipment subsequent to sale. This Court’s decision will have a significant impact on Durco’s liability under Washington law and around the country.

II. STATEMENT OF THE CASE

Amici adopt the arguments of the Petitioners. Under applicable Washington law, where a product manufacturer did not make or sell a product or material which causes injury, it should incur no liability for plaintiff's injury. Petitioner's alleged liability stems from the claim that it knew that its products sold to the Navy required asbestos-containing insulation since such insulation was specified by the Navy. Petitioner did not specify the use of insulation for its products, nor was there any suggestion that such insulation was necessary for the product's safe operation or design. Under applicable law, when a component or substance used by a purchaser or end user with a manufacturer's product is later found to be hazardous, and that component is not essential to the use or operation of the manufacturer's product, no liability should be imposed upon the manufacturer for the failure to warn about the component it did not manufacture or sell.

III. ARGUMENT

A. UNDER WASHINGTON STATE PRODUCTS LIABILITY LAW, THE MANUFACTURER IS ONLY LIABLE FOR PRODUCTS IT MANUFACTURES OR SELLS

In *Lockwood v. AC&S*, this Court held, under both negligence and strict products liability theories, that plaintiff must establish a reasonable connection between the injury, the product causing the injury, and the

manufacturer of that product. *Lockwood* 109 Wash.2d 235 (1987), *aff'd* 109 Wash.2d 235 (1987). In order to state a cause of action, the plaintiff must identify the particular manufacturer of the product that caused the injury. *Id.*, citing *Martin v. Abbott Laboratories*, 102 Wash.2d 581 (1984). If plaintiff cannot prove that defendant's product was the proximate cause of the harm suffered, defendant is entitled to summary judgment. *See Celotex Corp. v. Catratt*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed 2d 265, 273 (1986). In *Seattle First National Bank v. Tabert*, 86 Wash.2d 145 (1975), the court reiterated that, liability is limited to those in the chain of distribution. *Id.* at 148-49.

Failure to warn is a basis of product liability in Washington under the Products Liability Act and at common law. In *Novak v. Piggly Wiggly Puget Sound Co.*, the court noted that "[a] faultless product may be . . . 'defective' if it is unreasonably dangerous when placed in the hands of the end user without giving adequate warnings concerning the manner in which to safely use it." *Id.*, 22 Wash. App. 407 (1979). The Restatement (Second) of Torts, §402A provides that a manufacturer may be held strictly liable for failure to give adequate warnings. *See Haysom v. Coleman Lantern Co.*, 89 Wash.2d 474 (1978); *Teagle v. Fischer & Porter Co.*, 89 Wash.2d 149, 153-154 (1977); *Haugen v. Minnesota Mining & Mfg. Co.*, 15 Wash.App. 379 (1976).

The Washington Products Liability Act (the "Act") provides that "[a] product manufacturer is subject to liability to a claimant because adequate warnings or instructions were not provided." RCW 7.72.030.

In general, a duty to warn does not arise until "after the manufacturer has sufficient notice about a specific danger associated with the product." *Esparza v. Skyreach Equipment, Inc.*, 103 Wash.App. 916, 933 (2000); *see also, Patton v. Hutchinson Wil Rich Mfg. Co.*, 253 Kan. 741 (1993). A manufacturer may also be liable "for failure to give adequate warning" of a hazard involved in the use of a product, but only if such hazard is "*known, or in the exercise of reasonable care, should have been known* to the manufacturer." *Novak v. Piggly Wiggly Puget Sound Co., Supra* (emphasis added); *Restatement (Second of Torts*, §388 (1965)).

Under Washington law, a manufacturer is expected to warn about a hazard that is known or, in the exercise of reasonable care should have been known. A manufacturer of a versatile product such as a pump or valve, designed for many applications may be unaware of how the end user intends to use the product. Further, even if the application is known, the manufacturer may still not know whether the purchaser intends to insulate the product.¹ It would be unreasonable to expect a pump or valve

¹ The American Society for Testing and Materials "ASTM", a not-for-profit organization that provides a forum for the development and publication of voluntary consensus standards for materials, products, systems and services, has published the safety standard "Standard Guide for Heating Systems Surface Conditions that Produce Contact Burn

manufacturer to warn about the hazards associated with every possible use for their product.

1. The Component Part Manufacturer's Liability

The term "manufacturer," as that term is used in the Act:

includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. RCW 7.72.010(2).

RCW 7.72.010(3) defines "relevant product" as "that product or its component parts, which give rise to the product liability claim." With respect to liability for a component part, the Act states that the manufacturer is liable for a flaw in the component that causes plaintiff's injury. *See Martinez v. Callahan Mfg., Inc.*, 114 Wash. App. 1083 (Wash. App. 2003). As the court described in *Martinez*, "a company that designed and manufactured the bolts used to hold [a] hay pressing machine together would not be deemed a 'manufacturer' of the machine unless some design or manufacturing defect of the bolts was the cause of the injury." *Id.* at 1083.

The Court of Appeals' holdings in this case and *Braaten v. Buffalo*

Industries" (C1055-03). This Standard makes clear that the system designer stands in the best position to know what safety features to incorporate into a system. It is incumbent on the system designer to assess the need for insulation or some other form of protection depending upon the application and configuration of the system into which a manufacturer's product may be incorporated. The Standard provides "Clearly, quite different criteria may be justified for cases as diverse as those involving infants and domestic appliances, and experienced adults and industrial equipment."

Pumps, Inc. et al, 137 Wash.App. 32 (Wash. App. 2007) based its finding of a legal duty to warn on their finding that defendant equipment manufacturers knew or should have known that their product would be rendered unsafe when used with asbestos insulation. *Braaten, supra* at 1016; see also, *Stapleton v. Kawasaki Heavy Industries, Ltd.*, 608 F.2d 571 (5th Cir. 1979). In *Braaten*, the Court of Appeals scrutinized a number of decisions in which a product manufacturer *was in a position to know* that its own product would be used with that of a third party, thereby rendering its own product unsafe.

In *Teagle v. Fischer & Porter Co.*, 89 Wash.2d 149 (1979), a “flowrater” used to measure liquid chemicals including ammonia in the production of chemical fertilizer exploded causing permanent injury to plaintiff. Plaintiff’s employer had used O-rings to seal the open ends of the glass tube made of Viton in the flowrator which exploded. At the time it sold the flowrator, appellant knew that Viton O-rings should not be used to measure ammonia and it failed to warn of the dangers associated with using Viton O-rings. *Id.* at 151-152; *Braaten, supra* at 1016.

In *Stapleton v. Kawasaki Heavy Industries, Ltd., supra*, also relied upon, Kawasaki, a motorcycle manufacturer, was held to owe a duty to warn since it should have known that the switch as designed, when left in the “on” position, posed a fire hazard from leaking gasoline. The

operation of the Kawasaki motorcycle *required* the use of gasoline.

Braaten, supra at 1016-1017.

In *Wright v. Stang Manufacturing Co.*, 63 Cal. Rptr.2d 422 (1997), relied upon in *Simonetta*, a firefighter was injured while using a Stang Manufacturing Company ("Stang") deck gun attached to a fire engine. The deck gun broke loose from its mounting while under pressure, causing plaintiff's injury. Water had been supplied to the deck gun from a hydrant. Water pressure generated a "water hammer" or force more than four to six times the applied force which caused the gun to separate from the mounting because the riser had not been designed to withstand the water pressure of the deck gun. *Id. at 1226*. The California Court of Appeals found that defendant deck gun manufacturer had failed to warn of the potential dangers of utilizing the deck gun when attached to a hydrant. The duty to warn was premised on the manufacturer's knowledge of the hazards associated with the use of the deck gun with the hydrant which was requisite for the use of defendant's product.

The case law relied upon by the Court of Appeals addresses liability of a manufacturer for a component it did not make or sell but was nevertheless integral to the design or function of its product. Under this line of cases, a manufacturer's liability results from the failure to provide a suitable warning about the dangers associated with the component used

with the manufacturer's own product. Durco has no reason to know their products will be utilized with asbestos-containing insulation since such products have never required the use of insulation. The cases relied upon by the Court of Appeals essentially pertain to products susceptible to only one type of use. In Durco's case, its pumps and valves are amenable to multiple uses none of which require insulation. The court holdings in *Teagle v. Fischer & Porter Co. supra.*, *Stapleton v. Kawasaki Heavy Industries, Ltd., supra* and *Wright v. Stang Manufacturing Co., supra* are, therefore, inapposite. Durco's pumps and valves were not designed to be used with insulation and did not require insulation for safe or intended use.

2. Case Law in Other Jurisdictions

Courts in other states have similarly examined when a manufacturer may be held liable for a component it did not make or sell. In *Berkowitz v. A.C. & S., Inc.*, 288 A.D.2d 148 (1st Dept. 2001), a Navy case extending liability to a pump manufacturer for external insulation applied to its pumps, the New York Appellate Division, referenced *Rogers v. Sears, Roebuck and Co.*, 268 A.D.2d 245 (1st Dept. 2000) and *Rastelli v. Goodyear Tire & Rubber Co.*, 79 N.Y.2d 289 (1992).

In *Rogers*, a Sears gas grill designed to be used in combination with a propane tank exploded. In holding Sears liable, the Court found that the tank was *integral to the grill* so that Sears clearly knew the

propane tank would be used as well as the potential hazards associated with its use. *Rastelli*, on the other hand, involved a Goodyear tire which exploded when used in combination with a multipiece rim assembly. In finding Goodyear did not owe a duty to warn, the New York Court of Appeals held that there were many rim assemblies compatible with Goodyear's tires. It was therefore unreasonable to expect Goodyear to warn about the dangerous propensities of each one.

Similarly, Durco, as a manufacturer which has never sold products to the Navy, should not be expected to warn about every possible use and application for its products. While a commercial purchaser might conceivably apply asbestos insulation to a Durco product, insulation is unnecessary to such products' function. While in *Rastelli*, Goodyear was aware that its tires would be used with a variety of tire rim assemblies, it had no reason to know when, if at all, a particular type of assembly would be utilized. Durco's position is even stronger since, while Goodyear's tires required some type of rim assembly, Durco's pumps and valves *never* required insulation to be functional.

3. The Degree to Which a Potentially Hazardous Component Is Integral to the Defendant Manufacturer's Product Impacts the Degree of Knowledge Possessed by Defendant Manufacturer

In each of the cases relied upon by the Court of Appeals, which held that a manufacturer owed a duty to warn about a component used

with the manufacturer's product, the duty was based on the fact that the manufacturer's incorporated the component into its product design. When a subsequently added component is integral to the manufacturer's product, it is arguable that the manufacturer should anticipate the hazards associated with the use of the component. Since Kawasaki, for example, knew that gasoline was integral to its motorcycle, it was reasonable to expect it to warn users of the dangers from the gas tank switch. And in *Rogers* the design of the Sears grill required the use of a propane tank and, therefore, the hazards associated with the use of the propane tank by the consumer were known to Sears. In contrast asbestos insulation was never integral or necessary to Durco's products.

B. UNDER NEGLIGENCE THEORY, A MANUFACTURER SHOULD NOT OWE A DUTY TO WARN ABOUT ASBESTOS COMPONENTS IT HAS NO KNOWLEDGE WILL BE ADDED TO ITS PRODUCT

Under negligence theory, a duty to warn about hazards related to another party's product, requires an element of knowledge on the part of the manufacturer about the intended use of its product and the potential dangers inherent in the other party's products. *Teagle v. Fischer & Porter Co.*, 89 Wash.2d 149 (1977).

A negligence claim focuses upon a manufacturer's conduct. *Young v. Key Pharm. Inc.*, 130 Wash.2d 160 (1996). An essential element in any

negligence claim is a duty of care. *Hansen v. Friend*, 118 Wash.2d 476 (1992). Whether a legal duty exists in the first place will depends upon “mixed considerations of logic, common sense, justice, policy and precedent.” *Snyder v. Medical Services Corp.*, 145 Wash.2d 233 (2001). Once a duty is found, the jury determines the scope of that duty based on the foreseeable range of danger. *Bernethy v. Walt Failor’s Inc.*, 97 Wash.2d 929 (1982); *Briggs v. PacifiCorp.*, 120 Wash.App. 319 (2003); *Reichelt v. Johns-Manville Corp.*, 107 Wash.2d 761 (1987). In *Simonetta*, the Court of Appeals noted that the duty to warn arises when “hazards . . . are known or in the exercise of reasonable care should have been known to the manufacturer.” *Simonetta*, *supra* at 1022; *Novak*, *supra* at 412; *Restatement (Second) of Torts*, *supra* at section 388; *Callahan v. Keystone Fireworks Mfg. Co.*, 72 Wash.2d 823 (1967); *Little v. PPG Indus., Inc.* 92 Wash.2d 118 (1979).

The Court of Appeals ostensibly based its finding of a legal duty under a negligence theory upon defendant manufacturers’ presumptive knowledge that their products would be used with asbestos insulation.

We respectfully urge this Court to distinguish a manufacturer whose product design requires the use of a potentially hazardous component from one whose product may be used with a hazardous component which is not integral to the function of the manufacturer’s

product. The chart below is intended to highlight the distinction between manufacturers in the cases relied upon by the Court of Appeals and pump and valve manufacturers like Durco:

MANUFACTURER'S PRODUCT	HARMFUL COMPONENT REQUIRED	HARMFUL COMPONENT NOT REQUIRED	DECISION WITH RESPECT TO DUTY TO WARN
Durco Pumps And Valves	None	Asbestos Insulation	
Sears Grill	Propane Tank		Duty
Flowrater	Viton O-Rings		Duty
Kawasaki Motorcycle	Gasoline		Duty
Stang Deck Gun	Mounting		Duty
Goodyear Tire	Rim Assembly		No Duty

As reflected, the courts which have imposed a duty to warn have done so on the basis that the function of the manufacturer's product required the use of the hazardous component or substance. In *Sepulveda-Esquivel v. Central Machine Works Inc.*, 120 Wash. App. 12, 19 (2004), the manufacturer of an industrial hook had no knowledge as to how its product would be utilized and, therefore, defendants did not owe a duty to warn. Similarly, product manufacturers that produce generic products like pumps and valves which are amenable to many different applications should not be charged with a legal duty to warn about a product that is not intrinsic to the function of their own product.

1. Knowledge of Potential Product Use by a Purchaser Should Not Be the Basis of Liability for Failure to Warn in this State

The Court of Appeals, in its companion holdings in *Braaten* and *Simonetta*, recognized that manufacturer's ability to foresee the possibility that its product may be used with a potentially harmful product is not an appropriate basis for imposition:

Simonetta argues that foreseeability of the injury created the duty to warn. Foreseeability does not create a duty but sets limits once a duty is established . . . duty to warn workers like Simonetta arises from the requirement of ordinary care to warn users of a known danger. *Id.*, 137 Wash.App. at 23, fn2.

Importantly, since Durco did not sell products directly to the Navy, even if naval specifications alone were sufficient to put a manufacturer on notice (which Durco argues should not be the case), Durco never received such notice and should not, therefore, be charged with a duty to warn.

However, even if the Navy specified asbestos-insulation for some products, this did not necessarily mean insulation was specified uniformly for all products. Without proof that naval specifications consistently called for the use of asbestos insulation for all products, a manufacturer which sold to the Navy would not necessarily have reason to know of the hazards associated with asbestos insulation. There is simply not the same degree of certitude that insulation would be used in conjunction with the manufacturer's product, unlike the defendants in the cases relied upon by the Court of Appeals. Asbestos insulation is not integral to pumps or

valves in the same way O-Rings were integral to the flowrater or a propane tank was to the Sears grill.

In *Simonetta*, the Court found that the Griscom Russell evaporator to which plaintiff was exposed *required* insulation to work properly. *Simonetta*, 137 Wash. App. at 22. In fact, the Court's conclusion was based on expert testimony that a product application "that involves the use of steam and that is hot would [cause the manufacturer to] understand that the unit is going to be insulated" *Id* at 22. While some products used by the Navy may have required the use of asbestos insulation *because of their hot application*, many products used on naval vessels many not have required insulation. An example would be a centrifugal cold water pump or fire pump which used ambient sea water. According to the expert referenced in the Court of Appeals decision, the basis of his opinion that asbestos insulation was specified for the products in issue was the fact that the Navy intended a hot application for the product. Although the Court of Appeals, in *Braaten*, found that defendant pump manufacturers "knew" their pumps would be insulated on the basis of naval specification, it is unclear from the factual development of these two cases and existing case law whether the Navy actually specified asbestos-insulation for *all* equipment on naval vessels. *Braaten*, 137 Wash. App. at 37.

An apt analogy which demonstrates the logical inconsistency of

extending a duty to warn to a manufacturer like Durco is presented by the following hypothetical factual scenario:

- A bookshelf manufacturer M sells a black, painted bookshelf to customer C.
- After purchase, C repaints the bookshelf green using paint containing Xylene and thinner containing Toluene, both potentially toxic substances.
- C suffers injuries as a result of exposure to the Toluene and Xylene.
- M does not, and should not, have a legal duty to warn C of the potential dangers associated with Toluene or Xylene despite the fact that M may have foreseen that C might choose to repaint the bookshelf after purchase.
- Nor would M have a duty to provide warnings regarding the potential toxicity of the paint to a third-party P, hired by C to paint the bookshelf. To impose such a duty on M would extend the duty of care beyond reasonable limits and would potentially require M to provide warnings for innumerable hazards having no reasonable nexus to M's product *or the product's intended use*.

The above illustration is analogous to that of product

manufacturers like Durco.² This Court should reject Respondent's attempt to expand a manufacturer's duty to warn on the basis of the facts presented here. Clearly, extension of a duty to warn to a manufacturer that lacks knowledge that its product will be used in combination with another

² Similarly, Durco customers on occasion purchased Durco pumps and proceeded to paint them a different color in order to match equipment in the customer's facility. In that case, as here, Durco would have had no knowledge of or influence on that customer's choice, nor any recommendation with respect to the color or type of paint the end user selected. A plaintiff who claimed injuries from exposure to toxic chemicals in the paint, would have no cognizable cause of action against Durco based on a failure to warn about those chemicals. Like the external insulation at issue here, the paint has no nexus to the pump's intended function—to move fluids.

potentially hazardous product does not comport with logic, justice, public policy or legal precedent in this State.

Durco urges the Court to reject a theory of liability based upon the failure of product manufacturers to warn about the hazards associated with products that are not essential to the use or design of their own product.

Asbestos containing insulation, used by the Navy for *some* applications, is not essential or intrinsic to the use of pumps or valves. Certainly in Durco's case: (1) there is nothing intrinsically wrong with its pumps or valves; (2) it has never sold products to the Navy; (3) Durco's products have never required insulation or asbestos components to be functional; and (4) Durco is not aware of the end user's intent to use insulation with its products. In the case of a manufacturer of a generic product like pumps and valves which never sold products in a naval setting, there is no basis for imposition of a duty to warn.

**C. ON PUBLIC POLICY GROUNDS, A DUTY TO WARN
SHOULD NOT BE EXTENDED TO MANUFACTURERS
LIKE DURCO**

The Court of Appeals, in *Braaten*, addressed public policy considerations in asbestos cases by examining such considerations in the context of gasoline and other hazardous substance cases. *Id.* at 1017. The Court explained, "when a manufacturer's product design utilizes a hazardous substance that can be released during normal use" it is deemed

to know of the hazard and has a duty to warn. *Id.* Analogizing manufacturers who sell products to the Navy to the motorcycle manufacturer, Kawasaki, the Court held that manufacturers who sold products to the Navy should have known of dangers associated with asbestos use their products in the same manner Kawasaki knew the fuel switch posed a hazard to users. It is respectfully submitted that the Court of Appeal's reasoning for extension of a duty to warn to manufacturers who sold products to the Navy was flawed. While for some products insulation may have been required by the Navy, there is no evidence asbestos insulation was required for all products used on naval vessels.

The public policy rationale for extending a legal duty to manufacturers in each of the cases relied upon by the Court of Appeals cited above is that the defective components or materials used with their products was intrinsic to their product's use or function:

On whatever theory, the justification for the strict liability has been said to be that the seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that the public has the right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods; that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and that the consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper person to afford it are those who market the products. *Braaten* at 1017.

There is no public policy rationale for extending a duty of care to a product manufacturer that has no knowledge that components which are not intrinsic to its product's design will be used with its product. In addition to lack of fairness, there are other compelling policy reasons militating against holding such a manufacturer responsible. If the duty to warn is to fulfill its intended purpose of placing the onus on the party best situated to identify the hazard, it is nonsensical to hold responsible a manufacturer that is unaware or of the potential hazard.

Responsibility for providing appropriate warnings, first and foremost, belongs to the party that produced and sold the product initially, since it is most knowledgeable about the product's potential hazards and best positioned to provide effective warnings. *In Braaten*, the Court of Appeals noted that:

As a matter of policy, it is logical and sensible to place some duty to warn on the manufacturer who is in the best position to foresee the specific danger involved in the use of a product . . . *Id.* at 1018-1019.

Durco and other similarly situated product manufacturers were not the parties best situated to warn of the potential hazard of asbestos insulation. The manufacturer who has reason to *know* its product will be used with another manufacturer's product may learn of potential hazards so as to provide appropriate warnings to consumers. *See Stapleton v. Kawasaki Heavy Indus.*, 608 F.2d 571 (1979). Under the factual

circumstances set out in *Kawasaki*, there was arguably a policy justification for extending a legal duty to warn since Kawasaki *knew* its motorcycle required the use of gasoline and, arguably, it was in the best position to provide suitable warnings with regard to the dangers associated with the use of its motorcycle.

Manufacturers and sellers of asbestos-containing insulation are vested with responsibility to warn of potential hazards. Having researched, tested, and gathered data about insulation and the health effects associated with its use, the asbestos manufacturers possessed the necessary information to determine the need for warnings.³ Other than original manufacturers, jobsite owners or parties who specified the use of asbestos insulation were best situated to learn of the potential hazards associated with its use and should have provided suitable warnings. Unlike Durco, these parties knew asbestos insulation would be used because they ostensibly specified it. Extension of a duty to warn to a manufacturer like Durco—which did not manufacture, supply or have reason to know its products would be used with such insulation – would defy all considerations of “logic, common sense, justice, policy and

³ While many asbestos manufacturers are now insolvent and incapable of satisfying a judgment, as noted by the Court in *Braaten*, the Court’s basis for extending a legal duty to other manufacturers is the fact that these manufacturers’ products, *as designed*, incorporated or, under the circumstances, required potentially hazardous asbestos insulation. See *Braaten* at 1017; *Stapleton*, *supra* at 572.

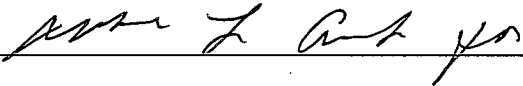
precedent.” *See Snyder*, 145 Wash.2d 233, 241 (2001). Moreover, extension of a duty to warn to Durco would create a slippery slope requiring manufacturers to warn about an unlimited array of products which might be used in combination with theirs. Public policy strongly militates against extension of a duty to warn to Durco.

CONCLUSION

Under applicable law, under product liability or negligent failure to warn theory, liability should be limited to manufacturers and others in the chain of distribution that place products in the stream of commerce. It is respectfully requested that this Court reinstate the grant of summary judgment and dismissal of all claims against Petitioners on the basis of applicable law. It is further requested that the Court clarify when a manufacturer may be held liable for a product it does not manufacture or sell. Durco and other similarly situated manufacturers of pumps and valves did not manufacture products which required the use of asbestos-containing insulation for their intended use. Unless a potentially hazardous product or substance is *required* for the design and intended function of a manufacturer’s product, it is respectfully submitted there should be no duty to warn.

RESPECTFULLY SUBMITTED this 8th day of February, 2008.

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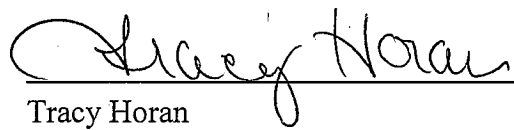
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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2008, a true and correct
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